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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,593	01/10/2001	Michael G. Walker	PC-0025 CIP	9627
27904	7590	03/04/2004	EXAMINER	
INCYTE CORPORATION 3160 PORTER DRIVE PALO ALTO, CA 94304			LI, RUIXIANG	
			ART UNIT	PAPER NUMBER

1646

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/758,593	Applicant(s) WALKER, MICHAEL G.	
	Examiner Ruixiang Li	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): the rejection of claim 2 under 35 USC 112, 2nd paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2.

Claim(s) objected to: _____.

Claim(s) rejected: 1 and 3-12.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: the rejections of claims 1 and 3-12 under 35 USC 112, 1st paragraph remain.

Claim 1 (b) recites an isolated cDNA, or the complement thereof, comprising a nucleic acid encoding a naturally occurring variant of the amino acid sequence of SEQ ID NO: 1 having at least 90% identity to the amino acid sequence of SEQ ID NO: 1. Claims 2-12 depend from claim 1, either directly or indirectly.

(i) Rejection of claims 1 and 2-12 under 35 USC 112, 1st paragraph (enablement)

Applicants continue to argue that the nucleic acid encoding a naturally occurring variant of the amino acid sequence of SEQ ID NO: 1 having at least 90% identity to the amino acid sequence of SEQ ID NO: 1 is fully enabled. Applicants' argument has been fully considered, but is not deemed to be persuasive because the claim does not have a functional limitation whereas the specification fails to provide sufficient direction to guide an artisan to make and use the variants.

(ii) Rejection of claims 1 and 2-12 under 35 USC 112, 1st paragraph (written description)

Applicants continue to argue that the claimed variants, at least as recited in claim 1 of the instant application fulfill the written description requirement of 35 USC 112, first paragraph. This is not persuasive because the claim does not require a specific functional limitation whereas the specification fails to provide representative species of the variants, the relation of the function/structure of the variants, and sufficient description on the claimed variants so that an artisan would be able to distinguish the naturally occurring sequence from the nonnaturally occurring one.

The objection to the Amendment to the specification has been withdrawn in view of Applicants' persuasive argument regarding the support for the amendment.

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